

AO 120 (Rev. 3/04)

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
 filed in the U.S. District Court Nevada on the following ☐ Patents or ☒ Trademarks:

DOCKET NO. 2:08-CV1409	DATE FILED 10/17/2008	U.S. DISTRICT COURT Nevada
PLAINTIFF J.W. Harris Co Inc		DEFENDANT CDL International Sales Inc et al.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 see Complaint		
2 1,013,432		
3 1,450,474		
4 1,730,056		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
2			
3			
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK Lance S. Wilson	(BY) DEPUTY CLERK Eileen Sterba	DATE 10/17/08
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Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

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11 Attorneys for Plaintiffs The Harris Electric
12 Company and Harris Global, Inc.

13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF NEVADA**

15 J.W. HARRIS CO., INC.,

16 Plaintiffs,

17 vs.

18 CDL INTERNATIONAL SALES INC., AND
19 INMAN INTERNATIONAL CORP.

20 Defendants.

COMPLAINT

(JURY DEMAND)

21 **COMPLAINT FOR TRADEMARK INFRINGEMENT**

22 Plaintiff J. W. Harris Co., Inc. ("Harris") brings this action to recover for the damage
23 caused by, and to prevent further damage arising from Defendant CDL International Sales Inc.'s
24 ("CDL") and Defendant Inman International Corp.'s ("Inman") (collectively, "Defendants")
25 unlawful use of Harris's trademarks and trade dress. Defendants' unlawful use of Harris's
26 trademarks and trade dress gives rise to the claims that Harris asserts in this Complaint including:
27 (1) trademark infringement under § 32 of the Lanham Act, 15 U.S.C. § 1114; (2) trade dress

1 infringement under § 32 of the Lanham Act, 15 U.S.C. § 1114; (3) false designation of origin and
2 false description and representation under § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); (4)
3 trademark dilution under § 43(c) of the Lanham Act, 15 U.S.C. § 1125(c); (5) false advertising
4 under § 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); and (6) common law unfair competition.
5 Harris, for its Complaint against Defendants, alleges by and through its attorneys as follows:

6
7 **PARTIES**

8 1. Harris is a corporation organized and existing under the laws of the State of Ohio.
9 Harris is located in and has its principal place of business at 4501 Quality Place, Mason, OH
10 45040. Harris develops, designs, manufactures and sells gas welding and cutting equipment,
11 industrial and specialty gas regulation equipment, gas distribution systems, brazing and soldering
12 alloys and welding consumables in the United States, including this judicial district.

13 2. On information and belief, Defendant CDI is a corporation organized and existing
14 under the laws of the State of Delaware and has its principal place of business at 1802 N. Carson
15 St., Suite 212-3555, Carson City, Nevada 89701.

16 3. On information and belief, Defendant Inman is a corporation organized and
17 existing under the laws of the State of Delaware and has its principal place of business at 1802 N.
18 Carson St., Suite 212-3555, Carson City, Nevada 89701.

19
20 **JURISDICTION AND VENUE**

21 4. This is an action arising under the trademark laws of the United States. This Court
22 has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1338 and 1367, and 15 U.S.C. § 1121.

23 5. This Court has personal general jurisdiction over Defendants because the
24 Defendants conduct business in and throughout the State of Nevada by, among other things,
25 offering for sale, selling and distributing products into Nevada and attending trade shows in
26 Nevada. In addition, the Court has jurisdiction over the Defendants, because the Defendants are
27 presently conducting business within the District of Nevada as an exhibitor at the FABTECH
28

1 International & AWS Welding Show, which runs from October 6, 2008, through October 8, 2008,
2 in Las Vegas, Nevada. The Court has specific jurisdiction over the Defendants because the
3 Defendants have caused and continues to cause tortious injury to Harris in the State of Nevada and
4 Harris's claims arise out of Defendants' contacts with the State of Nevada.

5 6. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) and (c).

6 **FACTUAL ALLEGATIONS AND BACKGROUND**

7 7. Harris is a world leader in the design, development, manufacture and sale of gas
8 cutting and welding equipment (including welding and cutting torches, cutting, welding, and
9 heating tips, industrial manifolds and cutting outfits) and related consumables (including cutting
10 tips) ("welding and cutting products"). As a result of Harris's efforts over the years, Harris has
11 become a leading supplier of welding and cutting products, selling to all categories of consumers,
12 including industry, professionals, amateurs and hobbyists. These consumers have come to
13 associate Harris brand welding and cutting products with Harris. These consumers identify Harris
14 as the source of these welding and cutting products.

15 8. The "Harris" name and the Harris Trademarks listed in paragraphs (a)-(c) below
16 have become associated with Harris's corporate identity and serve as an indication of source for
17 products made and sold by Harris and the high quality standards to which those products are
18 made. Due to this association, Harris, which greatly values its intellectual property, applied for
19 and received several trademarks for the word "Harris" as used on welding and cutting products
20 under Section 2(f) of the Lanham Act:

21 (a) Trademark No. 1,013,432 was duly and lawfully registered on June 17,
22 1975. A true and correct copy of the certificate of registration for the Harris '432 Trademark is
23 attached hereto as Exhibit A. Harris is the owner of all right, title and interest in the Harris '432
24 Trademark. Harris has the right to sue and recover damages for infringement of this mark.

(b) Trademark No. 1,450,474 was duly and lawfully registered on August 4, 1987. A true and correct copy of the certificate of registration for the Harris '474 Trademark is attached hereto as Exhibit B. Harris is the owner of all right, title and interest in the Harris '474 Trademark. Harris has the right to sue and recover damages for infringement of this mark.

(c) Trademark No. 1,730,056 was duly and lawfully registered on November 3, 1992. A true and correct copy of the certificate of registration for the Harris '056 Trademark is attached hereto as Exhibit C. Harris is the owner of all right, title and interest in the Harris '056 Trademark. Harris has the right to sue and recover damages for infringement of this mark.

9. Similarly, Harris has manufactured cutting torches, such as its "V-Series" cutting torches, for an extensive period of time having a distinctive three-tube gas feed design, a distinctive mixer head and a distinctive valve portion, which collectively have become associated with Harris's corporate identity and that serves as an indication of source for products made and sold by Harris and the high quality standards to which those products are made. The Harris trade dress (the "Harris Trade Dress") includes, among other things, this three-tube gas feed design, mixer head and valve portion.

10. Harris has also expended substantial sums of money and time in the development, advertising, and promotion of the Harris Trademarks and Harris Trade Dress. As a result, the Harris Trademarks and Harris Trade Dress have achieved enormous recognition and corresponding good will within the welding, construction and repair industries and have come to be recognized and relied on by the trade as identifying products originating exclusively with Harris, being of very high quality, and recognized as a leading brand in the industry. The Harris Trademarks are strong and famous marks. The Harris Trade Dress is also strong and famous.

11. Through its extensive advertising campaigns and its production and sale of consistently high quality welding and cutting products, Harris has established the Harris

1 Trademarks as valuable, prominent and famous trademarks in the welding and cutting products
2 trade. The Harris Trade Dress has also become valuable, prominent and famous as a result of
3 substantial advertising campaigns and customer recognition of this distinctive trade dress.

4 **DEFENDANTS' UNLAWFUL USE OF HARRIS'S TRADEMARK**

5 12. Harris recently attended the FABTECH International & AWS Welding Show
6 ("AWS Trade Show"), which ran from October 6-8, 2008, at the Las Vegas Convention Center in
7 Las Vegas, Nevada. The AWS Trade Show is one of the largest events in North America
8 dedicated to showcasing a full spectrum of metal forming, fabricating, tube and pipe, and welding
9 equipment and technology. Thousands of buyers and sellers in the welding industry attend the
10 AWS Trade Show. Harris expects to generate significant business and generate substantial
11 goodwill through its participation in AWS Trade Show.

13 13. On information and belief, Defendants manufacture and sell welding and cutting
14 equipment and related accessories, including torch kits. Harris has learned that Defendants are
15 exhibiting torch kits, having the name "CDL Torch Kit" at the AWS Trade Show that use the
16 phrase "Harris Style" and that use the distinctive Harris Trade Dress.

18 **A. "Harris Style" Torch Kits**

19 14. Defendants sell a torch kit with the phrase "Harris Style" prominently displayed on
20 the kit's box. See Exhibit D, photograph of CDL torch kit taken at the AWS trade show.

21 15. Harris has never and does not now sponsor, endorse, authorize or permit
22 Defendants' use of the Harris Trademarks.

23 16. On information and belief, Defendants have knowledge and notice of the Harris
24 Trademarks and Harris's rights, goodwill, and valuable reputation in and to the Harris
25 Trademarks. Defendants have used and continue to use the Harris Trademarks for the purpose of
26 taking advantage of Harris's goodwill and valuable reputation in the mark, and to convey that its
27 products are made of the same high quality and standards associated with products made and sold
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1 by Harris. By using the Harris Trademarks, Defendants are creating a belief in the public that it
2 and its products are associated with Harris and is therefore misappropriating Harris's goodwill and
3 reputation.

4 17. Defendants' actions are willful, wanton, and in deliberate disregard of Harris's
5 rights, and are done to cause confusion, and make this an exceptional case.

6 18. Harris has been and will continue to be irreparably harmed by Defendants' illegal
7 and unauthorized use of the Harris Trademarks and by Defendants' acts of infringement, dilution,
8 false advertising and unfair competition.

9 19. Harris has no adequate remedy at law.

10 **B. Harris Trade Dress**

11 20. Defendants sell a torch kit having a cutting torch which uses the Harris Trade
12 Dress, including the three-tube gas feed design, mixer head and valve portion.

13 21. Harris has never and does not now sponsor, endorse, authorize or permit
14 Defendants' use of the Harris Trade Dress.

15 22. On information and belief, Defendants have knowledge and notice of the Harris
16 Trade Dress and Harris's rights, goodwill, and valuable reputation in and to the Harris Trade
17 Dress. Defendants have used and continue to use the Harris Trade Dress for the purpose of taking
18 advantage of Harris's goodwill and valuable reputation in the trade dress, and to convey that its
19 products are made of the same high quality and standards associated with products made and sold
20 by Harris. By using the Harris Trade Dress, Defendants are creating a belief in the public that it
21 and its products are associated with Harris and is therefore misappropriating Harris's goodwill and
22 reputation.

23 23. Defendants' actions are willful, wanton, and in deliberate disregard of Harris's
24 rights, and are done to cause confusion, and make this an exceptional case.

24. Harris has been and will continue to be irreparably harmed by Defendants' illegal and unauthorized use of the Harris Trade Dress and by Defendants' acts of infringement, dilution, false advertising and unfair competition.

25. Harris has no adequate remedy at law.

COUNT I

(Infringement of Federally Registered Trademark – 14 U.S.C. § 1114)

26. Harris incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth herein.

27. This claim arises pursuant to 15 U.S.C. § 1114, Section 32 of the Lanham Act, for infringement of Harris's federally registered Harris Trademarks.

28. After the adoption, use and registration by Harris of the Harris Trademarks, Defendants adopted and began using the marks in commerce without the authorization of Harris. Defendants' conduct is willful and with full knowledge of Harris's prior use of and rights to the Harris Trademarks.

29. Defendants' use of the Harris Trademarks in connection with its welding products is a violation of Harris's rights and constitutes infringement of the Harris Trademarks, because such use is likely to cause confusion, mistake, and deception of consumers as to the source of Defendants' goods and services in light of the Harris Trademarks.

30. Defendants' acts have been and are being committed with the intent and purpose of misappropriating the goodwill of Harris.

31. Harris has been, is, and will continue to be irreparably harmed by Defendants' unauthorized use of the Harris Trademarks. In particular, because of Harris's inability to regulate either the conditions of the products sold or the advertisements of Defendants, Defendants' unauthorized use of Harris's mark will cause injury to the valuable reputation and goodwill Harris has developed in these trademarks.

32. As a direct and proximate result of Defendants' violation of Harris's trademark rights, Harris has been damaged by a loss of profits and sales. Further, Defendants have benefited by its continued unauthorized use of the Harris Trademarks, thereby realizing profits and sales it would not otherwise have obtained. Harris has also incurred attorneys fees' and costs to bring the present action.

33. Defendants are now committing the acts alleged above and has refused to cease committing those acts after due notice of Harris's rights. Unless Defendants are enjoined from continuing its wrongful acts, Harris will continue to be immediately and irreparably harmed.

34. Harris has no adequate remedy at law, and the balance of the equities favors Harris.

COUNT II
(Trade Dress Infringement under 14 U.S.C. § 1114)

35. Harris incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth herein.

36. Subsequent to the adoption, use and registration by Harris of the Harris Trade Dress, Defendants adopted and began using the Harris Trade Dress in commerce without the authorization of Harris.

37. Harris owns exclusive rights in and to the Harris Trade Dress.

38. Defendants' use of the Harris Trade Dress in connection with its welding products infringes the Harris Trade Dress, because such use is likely to cause confusion, mistake, or deception among consumers as to the source and quality of Defendants' products.

39. As a direct and proximate result of Defendants' infringement of the Harris Trade Dress, Harris has suffered and will continue to suffer damages and irreparable injury to its goodwill and reputation.

40. Upon information and belief, CDL's conduct is intentional and willful.

41. Harris is entitled to injunctive relief, damages, attorneys' fees and costs in an

amount to be determined at trial.

COUNT III
(False Designation of Origin – 15 U.S.C. §1125(a)(1)(A))

42. Harris incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth herein.

43. This Count arises under 15 U.S.C. § 1125(a), Section 43(a) of the Lanham Act, for false designation, description, and representation of goods and services as to their nature and origin.

44. After the adoption, use and registration by Harris of the Harris Trademarks, Defendants adopted the Harris Trademarks in connection with the sale of similar goods.

45. The marks adopted by Defendants are Harris's trademarks, and the use of these trademarks by Defendants is likely to cause confusion, mistake and deceive customers.

46. Defendants are not authorized or licensed to use the Harris Trademarks. Despite these facts, Defendants have used and continues to use the Harris Trademarks in commerce in a manner likely to cause confusion or mistake as to the origin of its welding and cutting products. Because of Defendants' wrongful use of Harris's mark, Defendants are deceptively leading consumers to believe that Defendants' products originate with or are sponsored or otherwise approved by Harris, in violation of section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

47. Defendants have committed, are now committing and will continue to commit the acts described above unless enjoined by this Court.

48. Defendants are intentionally and willfully deceiving the public while depriving Harris of the sales and profits it would otherwise obtain, and Defendants have irreparably damaged the valuable reputation and goodwill of Harris and the Harris Trademarks.

49. Harris has no adequate remedy at law, and the balance of the equities favors Harris.

COUNT IV
(False Advertising – 15 U.S.C. § 1125(a))

50. Harris incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth herein.

51. Defendants' advertisements and catalogs include literally false statements of fact regarding Defendants' products.

52. Defendants' advertisements and catalogs also include statements of fact that are, even if true, misleading or confusing.

53. On information and belief, consumers have actually been misled by Defendants' false advertising.

54. Defendants have used and continues to use the Harris Trademarks in commerce in a manner likely to cause confusion or mistake as to the origin of its welding and cutting products. Defendants' wrongful use of Harris's Trademarks deceptively leads consumers to believe that Defendants' products originate with or are sponsored or otherwise approved by Harris, in violation of section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

55. Defendants have committed, are now committing and will continue to commit the acts described above unless enjoined by this Court.

56. Defendants are intentionally and willfully deceiving the public while depriving Harris of the sales and profits it would otherwise obtain, and Defendants have irreparably damaged the valuable reputation and goodwill of Harris and the Harris Trademarks.

57. Harris has no adequate remedy at law, and the balance of the equities favors Harris.

COUNT V
(Dilution – 15 U.S.C. § 1125(c))

58. Harris incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth herein.

59. This Count arises under 15 U.S.C. § 1125(c), Section 43(c) of the Lanham Act, for

dilution of trademarks.

60. Subsequent to the adoption, use and registration by Harris of the Harris Trademarks, Defendants adopted the Harris Trademarks in connection with the sale of identical goods.

61. The Harris Trademarks are distinctive and famous. By adopting and using Harris's trademark in commerce, Defendants have diluted Harris's rights in and to the Harris Trademarks, in violation of Section 43(c).

62. Defendants' use of the Harris Trademarks blurs and tarnishes and thereby dilutes the Harris Trademarks.

63. Harris has no adequate remedy at law, and the balance of the equities favor Harris.

COUNT VI
(Common Law Unfair Competition)

64. Harris incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth herein.

65. Defendants' acts constitute unfair competition and misappropriation of Harris's name, business reputation and good will, under the common law of the State of Nevada.

66. Defendants' acts are intended to attract attention to Defendants' products and thereby gain a commercial advantage by attracting business by the use of Harris's goodwill.

67. Defendants' activities have caused and will cause irreparable harm, damage, and injury to Harris, for which Harris has no adequate remedy at law.

68. The activities of Defendants have damaged, are damaging, and will continue to damage Harris in an amount as yet undetermined.

COUNT VII
(Attorneys' Fees)

69. Harris incorporates by reference the allegations set forth in the preceding paragraphs as though fully set forth herein.

70. Harris is entitled to recover its attorneys' fees and expenses pursuant to 15 U.S.C. § 1117 because Defendants' infringement is malicious, fraudulent and deliberate.

PRAYER FOR RELIEF

WHEREFORE, Harris prays for the following relief:

1. That the Court enter Judgment in favor of Harris and against Defendants on each of Harris's claims;

2. A permanent injunction enjoining Defendants and its officers, agents, owners, employees, confederates, attorneys and any persons in active concert or participation with them from:

a. Using the Harris Trademarks and Harris Trade Dress, or any other confusingly similar trade dress, in connection with the advertising, manufacturing, offering for sale, distribution or sale of cutting torches;

b. Using the Harris Trademarks and Harris Trade Dress, or any other confusingly similar trade dress, in a manner that it likely to dilute the distinctiveness of the Harris Trade Dress;

c. Committing any other acts calculated to cause actual or potential purchasers to believe that Harris is the source or sponsor of Defendants' goods;

d. Shipping, delivering, printing, ordering, importing, distributing, returning, transferring, destroying, or otherwise moving or disposing of in any manner such welders and/or other goods, packaging, or other material falsely bearing or intended to bear the Harris Trademarks and Harris Trade Dress or any reproduction, counterfeit, copy, or colorable imitation of the Harris Trademarks and Harris Trade Dress; and

e. Assisting, aiding, or abetting any supplier, distributor or any other person or business entity in engaging in or performing any of the activities referred to in the above

subparagraphs a through d;

3. That the Court issue a permanent injunction under Counts I, II, III, IV, V and VI including, but not limited to, an Order enjoining Defendants from using any trademarks, trade dress or other proprietary marks, symbols, designs, or logos of Harris;

4. That within 5 days from the date of such Order, Defendants must remove any exterior signs or advertisement containing the Harris Trademarks or any other proprietary mark of Harris from Defendants' places of business, and Defendants shall remove all other items used by Defendants in connection with the operation of its business which contain the Harris Trademarks or Harris's other proprietary marks and names, including but not limited to welding and cutting products, signs, pictures, advertisements and flyers, from Defendants' premises and placed in storage and be made available to Harris for inspection and destruction;

5. That Harris recovers its damages under Counts I, II, III, IV, V and VI incurred as a result of Defendants' continued unauthorized use of the Harris Trademarks, including without limitation the revenues and profits received by Defendants from its use of such mark;

6. That Harris recovers under Count VII its reasonable attorneys' fees and expenses incurred in connection with bringing this action;

7. That all costs of this action be charged against Defendants;

8. Find Defendants' conduct to be willful and wanton;

9. Find this to be an exceptional case; and

10. That the Court grant such other and further relief as it deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs each demand a jury trial on all issues so triable.

1 Dated: October 17, 2008.

2

By: _____ /s/

3

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
J.W. HARRIS CO., INC.

DEFENDANTS
CDL INTERNATIONAL SALES INC., and INMAN INTERNATIONAL CORP.

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)
Michael J. McCue, Lewis and Roca LLP, 3993 Howard Hughes Pkwy., Ste. 600, Las Vegas, NV 89169 (702) 949-8312

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans' Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HRA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 250 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		
		LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Removed from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
14 U.S.C. Section 1114; 15 U.S.C. Sections 1125(a)(1)(A) and 1125(c)

Brief description of cause:

Trademark/trade dress infringement; false designation of origin; unfair competition

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE: 10-17-2008 SIGNATURE OF ATTORNEY OF RECORD

/s/Michael J. McCue

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity. Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.